

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 388 of 1986

to

FIRST APPEAL No 390 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ORIENTAL FIRE AND GENERAL INSURANCE CO.LTD.

Versus

CHIMANBHAI NANABHAI PARMAR

Appearance:

MR ARUN H MEHTA for appellant

SERVED for Respondent No. 1, 4

MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 29/01/97

ORAL JUDGEMENT

Appellant, Oriental Fire & General Insurance Company Limited, has filed these three appeals under Section 11A of the Motor Vehicles Act (hereinafter referred to as 'Act'), challenging the common judgment and award dated December 10, 1985 passed by the Motor Accident Claims Tribunal (Main) of Kheda at Nadiad, in M.A.C. Petitions Nos. 290/8, 564/82 and 49/83.

The accident in question took place on February 13, 1982 at 11.30 p.m. near Rangaipura village on the

main road from Borsad to Porda. The claimants were travelling by a matador van bearing RTO registration No. GJU 9806 from Borsad to Porda. The claimants had paid fare for travelling by the said matador which was driven by original opponent No.1. It is alleged that the matador was driven by the driver with excessive speed without caring for the pedestrians and other vehicular traffic on the road. When the matador came near village Rangaipura, the driver (opponent No.1) lost control over the steering, with the result that the matador toppled down and fell in a drain, causing injuries to all the claimants.

The applicant of M.A.C. Petition No. 290 of 1982 had sustained two fractures on his right leg and injuries on his right wrist. He was taken to S.S.G. Hospital, Vadodara, for treatment and he was admitted as indoor patient for eight days. His leg was kept under plaster. He, therefore, claimed Rs.9999/- as compensation from the opponents, i.e. driver, owner and insurance company.

The applicant of M.A.C. Petition No.564 of 1982 sustained injuries on his mendible. He had sustained a fracture at that place besides fracture on his right leg. He was admitted in S.S.G. Hospital, Vadodara, as indoor patient for a period of 20 to 25 days. The applicant had also taken treatment from a private doctor. As a result of injuries, he could not attend to his daily avocation and, therefore, he claimed compensation of Rs.9999/- from the opponents.

The applicant of M.A.C. Petition No. 49 of 1983 had sustained fracture on his right thigh and injury on his right thigh and injury on his right hand. Stitches were taken at the places of wounds. He was admitted in S.S. G. Hospital, Vadodara, for 25 days. An operation was performed on his right leg and then it was kept in plaster. The applicant, therefore, claimed compensation of Rs.25,500/- from the opponents.

As all the three claim petitions arisen out of one accident, they were consolidated and the Tribunal, by its common award dated December 10, 1985, awarded compensation of:

- (i) Rs.6,850/- to the applicant of M.A.C. Petition No. 290 of 1982 with running interest at the rate of 6% per annum from the date of claim application till realisation;
- (ii) Rs.6,000/- to the applicant of M.A.C. Petition No. 564 of 1982 with running interest at the rate of 6%

per annum from the date of claim application till realisation;

- (iii) Rs.10,880/- to the applicant of M.A.C. Petition No. 49 of 1983 with running interest at the rate of 6% per annum from the date of claim application till realisation;

Since all the three appeals arise out of common judgment and award dated December 10,1985, and common question of law and facts are involved, they are disposed of by this common judgment.

Learned senior advocate Mr.A.H. Mehta for the appellant submitted that the matador involved in the accident had no permit to carry passengers for hire or reward and, therefore, the insurance company was not liable to satisfy the award and pay compensation to the claimants. It is also submitted on behalf of the insurance company that, as there was breach of condition of policy, and there was prohibition for use of the insured vehicle for the carriage of passengers for hire or reward, the insurance company was not liable to satisfy the award passed against the insured/driver.

It is not in dispute that the matador bearing R.T.O. Registration No. GJU 9806 was insured with the appellant-insurance company. In order to prove that the Insurance Company was not liable to satisfy the award, the Insurance Company was bound to produce the permit issued by the RTO, but no such permit was produced on the record of the Tribunal during the trial. It is held by the Full Bench of this Court in the case of New India Assurance Company vs. Smt. Nathiben, reported in 23(1) G.L.R. p.411, that the insurer, if he wants to disclaim the liability to satisfy the decree that may be passed in favour of the claimant in such an action, will have to establish:

1. that on the date of contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to ply for hire or reward, that is, by a permit to carry any passenger for hire or reward.
2. that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of passengers for hire or reward, and
3. that the vehicle was, in fact, used in the breach of such specified condition on the occasion giving rise to the claim.

It is further held by the Full Bench of this Court that, if all these facts are established by the insurer, then,

by virtue of Section 96(2)(b)(i)(a) of the Act, he may succeed in avoiding the liability to satisfy the decree that may come to be passed in the action. It is not disputed by the learned senior advocate for the Insurance Company that it had not produced permit issued to the matador on the record of the claim petitions. Therefore, in absence of the permit, it cannot be held that the Insurance Company was not liable to satisfy the award which is passed against the insured.

So far as the amount of compensation awarded to each of the three claimants is concerned, it is not open to the Insurance Company to dispute the quantum of amount of compensation awarded to each of the claimants under different heads. No other point is raised by the learned senior advocate for the appellant.

In view of the foregoing discussion, these appeals have no merit and, therefore, the same are dismissed with costs.

(swamy)